

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7371 of 1997

AND

CRIMINAL MISC.APPLICATION NO.7148 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? NO
2. To be referred to the Reporter or not? NO.
3. Whether Their Lordships wish to see the fair copy of the judgement? NO.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.
5. Whether it is to be circulated to the Civil Judge? NO.

ASHOKKUMAR CHANDULAL SOLANKI

Versus

STATE OF GUJARAT

Appearance:

CRIMINAL MISC.APPLICTION NO.7371 of 1997

MR BS PATEL for Petitioners

MR SA PANDYA APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR VD PARGHI for Respondent No. 3, 4

CRIMINAL MISC.APPLICATION NO.7148 of 1997.

MR BS PATEL for petitioner.

MR SA PANDYA APP for respondent No.1

NOTICE SERVED for respondent No.2.

MR VD PARGHI for respondent Nos. 3 & 4.

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 12/03/98

COMMON ORAL JUDGEMENT

The petitioners by filing these Criminal Misc. Applications under Section 482 of the Code of Criminal Procedure (" the Code " for short) have prayed to quash the complaint bearing No.0008/97, lodged at Dabhoi Police Station by Vijyalaxmi Virjibhai, for the offences punishable under Sections 363, 366 and 114 of the Indian Penal Code and Section 3 (1) (15) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (" the Act " for short). As per the F.I.R. lodged by the respondent No.3, the incident took place on 25-11-97 at about 1-14 hours, as the boy named Ashok took her sister Kashmira who is a minor, in a auto rickshaw and kidnapped her. It must be stated that there are no averments in the complaint with regard to the ingredients of Section 3 (1) (15) of the Act.

2. When the applications came up for hearing before this Court, notice came to be issued to the respondents and they have appeared through their learned advocate Mr. P.D. Parghi. It is an admitted fact that on the date of incident i.e. on 25-11-97, the petitioner Kashmira was aged 19 years and 3 months, therefore, she was not a minor. The petitioner Kashmiraben and the boy Ashok have married and are living together happily. The ingredients of Section 363 of the IPC are therefore, not attracted. Similarly, the ingredients of Section 366 and 114 of IPC will not be attracted to the facts of the present case, as the girl herself has gone and married with the boy Ashok. It must be stated that in the complaint, there is no whisper about the ingredients of Section 3 (1) (15) of the Act. Therefore, in view of these facts and circumstances, the complaint requires to be quashed as it is sheer abuse of process of law.

3. The Investigating Officer was called for at the time of hearing of these applications and he has stated that the girl is adult and the girl and the boy have married and they are living together happily and there is no substance in the complaint and therefore, the Investigating Officer is likely to file final report to the effect that no case is made out for filing the charge sheet.

4. For the foregoing reasons, both these Criminal Misc. Applications are allowed. Rule made absolute.

* * * *